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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

ABIGAIL K.,

Petitioner,

v.

THE SUPERIOR COURT OF MERCED
COUNTY,

Respondent;

MERCED COUNTY HUMAN SERVICES
AGENCY,

Real Party in Interest.

F065922

(Super. Ct. Nos. JP000268,
JP000452)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. John D. Kiriwara, Judge.

David Haycraft, for Petitioner.

No appearance for Respondent.

James N. Fincher, County Counsel, and Sheri Damon, Deputy County Counsel,
for Real Party in Interest.

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* Before Levy, Acting P.J., Kane, J. and Peña, J.

Abigail K. seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested and combined six and 18-month review hearing (Welf. & Inst. Code, §§ 366.21, subd. (e) & 366.22, subd. (a))¹ terminating reunification services and setting a section 366.26 hearing as to her four-year-old son M.K., two-year-old daughter R.G., and one-year-old son O.G. Abigail contends the juvenile court erred in finding that it would be detrimental to return the children to her custody and that she was provided reasonable services. We disagree and deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Dependency proceedings were initiated in July 2010, when the Merced County Human Services Agency (agency) took then two-year-old M.K. and three-month-old R.G. into protective custody after receiving a report that Abigail and R.G.'s father, Oscar, were suicidal and engaged in domestic violence. The social worker who responded found Oscar crying and the home in disarray. Oscar said that he and Abigail were involved in a domestic dispute and he threatened to kill himself with a knife. He said he and Abigail threatened to kill themselves and each other, and the children were not safe in their care. The social worker observed prescription bottles of several medications on the floor prescribed to Abigail. Abigail denied needing mental health treatment or medication.

The agency filed a dependency petition alleging that Oscar and Abigail's domestic violence and untreated mental illness placed the children at a substantial risk of harm. The juvenile court detained the children pursuant to the petition and the agency placed them in the custody of M.K.'s paternal great aunt in Merced County. The juvenile court set the jurisdictional/dispositional hearing for July 2010.

Meanwhile, Abigail told a social worker that she had a difficult childhood and had been suicidal. She said she had been in counseling but stopped going about a year and a

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

half before because she was moving back and forth between Stockton and Modesto and did not have transportation. In February 2010, she began counseling with Tony Ryland in Los Banos and Dr. Haralson in Merced. She said she was diagnosed with post-traumatic stress disorder, depression, anxiety attacks, split personality and bipolar disorder, and was taking Paxil and Trazodone.

In September 2010, the juvenile court ordered reunification services for Abigail and Oscar, as well as for M.K.'s father, Joshua, and set the six-month review hearing for March 2011. Abigail's services plan required her to complete a parenting program, continue mental health counseling, complete a medication evaluation and comply with any medication regimen prescribed.

By March 2011, Abigail had completed a parenting program but did not interact with the children during visitation and was unable to divide her time between them. In addition, Abigail made three inter-county moves, from Merced to Stanislaus to San Joaquin and back to Merced. Consequently, she was not in one place long enough to receive any meaningful mental health services. In April 2011, Oscar was incarcerated for sexually molesting Abigail's eight-year-old sister. Abigail did not believe her sister was molested and continued to defend Oscar despite his incarceration.

In its report for the six-month review hearing, the agency recommended that the juvenile court terminate reunification services for Abigail, Oscar and Joshua.

In May 2011, the juvenile court conducted a contested six-month review hearing. Abigail testified that she moved several times out of necessity and that each move negatively affected her ability to participate in services. She explained that when a person moves to another county, it takes approximately 30 days for Medi-Cal benefits to become effective in the new county. She said she was referred to Dr. Alfonzo² in

² This clinician is referred to in the record as "Dr. Alonzo" and "Dr. Alfonzo" and the record does not clarify which name is accurate. However, the record states that social worker Mirella Martinez requested medical information from "Dr. Alfonzo." We will assume that she used the correct name in doing so and will refer to the clinician as such.

Stockton, who she met with three or four times before she moved again. Following Abigail's testimony, the agency changed its recommendation and asked the juvenile court to continue her services and approve a revised services plan. The juvenile court did so and set the 12-month review hearing for August 2011. The court also continued services for Joshua.

Abigail's revised services plan included an anger management/domestic violence assessment and group counseling for childhood sexual abuse. It also required Abigail to pursue mental health services in Merced County, request an appointment for a mental health and medication assessment, and participate in any treatment indicated. It also required her to address specific issues through individual and/or group therapy.

In August 2011, Abigail gave birth to Oscar's son, O.G., who was taken into protective custody and placed with his siblings in foster care. By this time, Abigail had completed an anger management assessment and was attending group sessions for sexual abuse. However, she did not understand how sexual abuse affected a child and denied that Oscar sexually molested her sister. In addition, she had not completed a medication evaluation.

In its initial report for the 12-month review hearing, the agency recommended that the juvenile court terminate Abigail's reunification services for noncompliance and failure to emotionally connect with her children and effectively manage their behavior. However, in a subsequent report, the agency asked the juvenile court to continue reunification services for Abigail so she could participate in intensive family visitation services and in domestic violence and anger management counseling.

In November 2011, at the 12-month review hearing, the juvenile court continued reunification services for Abigail and Joshua and set the 18-month review hearing for January 2012. That same month, the juvenile court ordered reunification services for Abigail as to O.G. and set the six-month review hearing for May 2012. The juvenile court denied Oscar reunification services.

The six and 18-month review hearings were continued multiple times and convened as a combined and contested hearing in August 2012. In the meantime, Abigail settled in Stockton and married Justin, who had a three-year-old son, Cody.

In November and December 2011, Abigail's visitation with the children was limited because the children were sick. In mid-December 2011, Abigail told social worker Martinez that she was not participating in her services. She did not think she had to since she was not visiting the children. She asked if Martinez could refer her for services in Stockton. Martinez told her it was too late because there was a hearing scheduled in January 2012. Martinez also explained that the agency had paid for several assessments in different counties and Abigail had not taken advantage of them. Martinez told Abigail she needed to be consistent and complete her services.

In late January 2012, during a conversation about mental health counseling, Abigail told Martinez she had never been referred for counseling and medication. Martinez reminded Abigail she was already seeing a doctor and taking medication. Abigail told Martinez she stopped taking medication when O.G. was born because the doctor told her she no longer needed it. Martinez told Abigail to provide a statement from the doctor stating she no longer needed medication. Several days later, Martinez contacted San Joaquin Mental Health for a status of Abigail's treatment and was given a release of medical information form.

In early February 2012, during a home visit, Abigail showed Martinez a doctor's note stating she could not take her medications, Paxil and Trazodone, during her pregnancy. Abigail told Martinez she did not know where to obtain mental health counseling and a medication evaluation and did not think she needed to take medication anymore because of the doctor's note. Martinez reminded Abigail she had been assessed and had appointments at San Joaquin Mental Health. Abigail acknowledged she went there but said she did not believe the agency would accept Dr. Alfonzo's assessment. Martinez faxed signed release of information forms to Abigail's mental health providers.

In late February 2012, Abigail contacted Martinez to tell her that she attempted to make an appointment at San Joaquin Mental Health but was told they did not accept Medi-Cal. She also contacted Merced County Mental Health and was told that her case was closed and that they did not accept Stockton Medi-Cal. Martinez asked Abigail if she would drop by the Merced office so she could help her set up appointments. Abigail said she could not because she had to transport Cody to his mother for visitation.

In late February 2012, Martinez received medical records from Community Medical Center in Stockton stating Abigail was evaluated earlier in the month for a panic attack and was prescribed medication. She reported having panic attacks two to three times a week and a history of anxiety since she was sixteen years old. In mid-March 2012, Martinez left the agency and the following June social worker Irene Lopez was assigned the case. Ms. Lopez would later testify that she was unaware if Abigail was assigned a social worker in that interim period.

In July 2012, Abigail told Lopez she had not completed her mental health assessment. By late August 2012, with Lopez's assistance, Abigail was evaluated by a psychiatrist, prescribed medication, and was participating in counseling.

In August 2012, the juvenile court convened the contested review hearing, which was conducted over multiple sessions and concluded in October 2012. The agency's recommendation was to terminate reunification services and set a section 366.26 hearing as to all three children. The agency's position was that the children could not be safely returned to Abigail's custody and that Abigail failed to comply with her mental health services. Abigail's position was that the children could be safely returned or alternatively that the agency did not provide her reasonable mental health services.

Julianne Sims-Culot testified that she provided Abigail weekly intensive visitation beginning in October 2011. She had some initial concerns about Abigail's inattention to the children's basic needs and her ability to provide structure. However, by March 2012, Abigail had progressed to the point that Sims-Culot discussed arranging unsupervised

visits in Merced. She described an unsupervised visit in April that caused her particular concern. Abigail, Justin, Abigail's grandparents and the children met at a large park. Sims-Culot drove by the park a little after noon to check on the family and observed Abigail, Justin and Abigail's grandparents near the picnic table and the children on the playground equipment. She estimated the distance between the picnic table and the equipment was equivalent to a city block. She drove by about four times and noticed the adults were not supervising the children. She even sat and watched for seven to eight minutes before Justin went over to check on them. She said it concerned her because the children are small and had easy access to the street so she intervened and told Abigail and Justin they needed to supervise the children. She said Abigail had not received any unsupervised visits since April.

Sims-Culot further testified that she had concerns about Abigail's ability to provide constant feeding for the baby and to supervise the children. She said Abigail was easily distracted and posed a potentially life-threatening danger to the children.

Abigail testified on cross-examination that Ms. Sims-Culot gave her a list of psychiatrists and counselors in the Stockton area. Abigail also said that she had been to the medical center in Stockton in 2010 and knew where to go.

In October 2012, at the conclusion of the hearing, the juvenile court found it would be detrimental to return the children to Abigail's custody and terminated her reunification services. The juvenile court also terminated Joshua's reunification services as to M.K. and set a section 366.26 hearing as to all three children. This petition ensued.

DISCUSSION

I. Detriment

There is a statutory presumption at each review hearing that the juvenile court will return the minor children to parental custody unless it finds by a preponderance of the evidence that it would pose a substantial risk of detriment to the child to do so.

(§§ 366.21, subds. (e) & (f); 366.22, subd. (a).) A parent challenging the juvenile court's

finding of detrimental return bears the burden of showing that the juvenile court's finding was error. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.)

Abigail contends the children can be safely returned to her custody because she demonstrated an increased ability to care for and supervise them. She acknowledges the incident at the park was concerning but asserts she recognized her mistake and did not repeat it. She also points out that Justin will be there to help her manage the children.

In essence, Abigail does not argue the juvenile court erred in not returning the children to her. She simply cites reasons why she believes it could have.

Our role on review is not to independently review the proceedings or reweigh the evidence to determine whether the juvenile court could have made an alternative or contrary finding. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Rather, we determine whether substantial evidence supports the finding that the juvenile court made in this case, that it would be detrimental to return the children. In our view, such evidence exists in this record, most notably the testimony of Ms. Sim-Culot, who testified Abigail was not only inconsistent in her care of the children but inattentive to the point of endangering their lives. Thus, we find no error in the juvenile court's finding it would be detrimental to return the children to Abigail's custody.

II. Reasonableness of Services

Abigail contends she was not provided reasonable mental health services because the agency did not maintain contact with her or make reasonable efforts to help her obtain mental health counseling and a medication evaluation by a psychiatrist. To that end, she cites Martinez's failure to contact San Joaquin Mental Health on her behalf in January and February of 2012 and the agency's failure to assign her a social worker between March and June of 2012.

In dependency proceedings, each family is unique with respect to its circumstances and needs and the agency is duty-bound to make reasonable efforts to assist the family in its effort to reunify. (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774,

1790.) The standard by which the agency's efforts are measured, however, is not perfection. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) Rather, "the standard is ... whether they were reasonable under the circumstances." (*Ibid.*)

In this case, the agency could have been more proactive in making sure Abigail completed a medication assessment and was participating in mental health counseling. At a minimum, it seems, it could have ensured that she had an assigned social worker at all times. However, notwithstanding all that the agency could have done, the question is whether what it did was reasonable. In this case, we conclude it was.

According to the record, the agency provided Abigail with the proper mental health referrals. In addition, Abigail was very familiar with mental health services and how to access them. In fact, the record reflects that she utilized mental health services for many years and was in therapy and taking medication before the children were detained. Further, Abigail declined to utilize services. For example, she stopped participating in therapy in November and December 2011 because she was not visiting the children. She also decided not to take her medication after O.G. was born. Finally, she declined Martinez's offer in February 2012 to help her make appointments in Stockton. Given her refusal to participate, Abigail cannot blame the agency for her lack of mental health services from November 2011 to February 2012.

The question then is whether the agency's failure to assign a caseworker between March and June of 2012 rendered Abigail's services unreasonable. On the facts of this case, we conclude it did not. During that interim period, Abigail had the regular support and guidance of Sims-Culot who, according to Abigail, provided her a list of psychiatrists and counselors in the Stockton area. Further, though mental health services were an important aspect of Abigail's services plan, facilitated visitation was also important. Abigail acknowledges that she was provided this "one-on-one instruction" and concedes that it was adequate. Given Abigail's familiarity with mental health services, Sims-Culot's availability to assist her, and the agency's otherwise reasonable provision of

services, we cannot say any deficiency in providing mental health services, to the extent it occurred, rendered Abigail's services unreasonable.

Based on the foregoing, we conclude Abigail was provided reasonable services. Consequently, we find no error in the juvenile court's orders terminating her reunification services and setting a section 366.26 hearing and we deny the petition.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.